

COUNCIL MINUTES
TIGARD CITY COUNCIL MEETING
December 14, 2004

The meeting was called to order at 6:10 p.m. by Mayor Dirksen.

Council Present: Mayor Dirksen, Councilors Moore, Sherwood, Wilson, and Woodruff

- STUDY SESSION

- MEET WITH TIGARD-TUALATIN SCHOOL DISTRICT CONSULTANT ON RECRUITMENT

Tigard-Tualatin School Board Member Barry Albertson and Oregon School Boards Association Representative Greg McKenzie were present to discuss with the City Council the process the School District will follow to recruit a new superintendent. Superintendent Lowder has notified the District of his plans to seek another post in California. Mr. Albertson advised that the School District is asking all identified stakeholder groups to share with the District the attributes desired in a superintendent. Council members offered the following suggestions:

- previous experience as a superintendent or an assistant to someone in that role
- fiscally astute
- someone who will want to make this post a long-lasting career (i.e., 10 years)
- experience working with other governmental jurisdictions
- interested in maintaining the good relationships with the city and state agencies
- continued regular interaction with the City Manager and Chief of Police
- politically astute
- possesses a good public persona
- consensus builder
- community oriented
- continuation of the current good relationships

Mr. Albertson and Mr. McKenzie reviewed in more detail the process for recruitment. Mayor Dirksen thanked the School District representatives for the opportunity to give input.

➤ CITY MANAGER 360 PERFORMANCE REVIEW DISCUSSION

Council members discussed participation of raters for the 360 performance review of the City Manager. Human Resources Director Zodrow was present and participated in the discussion on this item.

Consensus of the Council was to include the following individuals as raters:

- Current Mayor & Council members
- City of Tigard Department heads ("direct reports")
- One or Two Peers to the City Manager (i.e., Washington County Administrator and/or the City of Tualatin City Manager)
- Two members from the community (Council discussed a number of individuals for this category including the Planning Commission President, Washington County Board Chair and Councilor Moore, who will be leaving the Council at the end of the year. The names of these two individuals will be submitted to the Human Resources Director.)

There was discussion about review components. It was suggested that raters be advised they could place an "N/A" in those areas where they do not feel they are qualified to comment because they do not interact with the City Manager in a particular situation or area that is being rated.

Ms. Zodrow reviewed the timeline and it appears that the review could be conducted in March. This item will be discussed again at the January 25, 2005, Council meeting.

➤ COUNCIL DESIGNATION OF VICE CHAIR FOR JOINT WATER COMMISSION

Councilor Woodruff agreed to serve as the Vice Chair for the Joint Water Commission.

➤ CITIZEN REPRESENTATIVE TO WCCCA BUDGET COMMITTEE – REAPPOINT BOB ROHLF

No decision on this appointment was made. Mayor Dirksen will discuss this with City Manager Monahan.

➤ CITY HALL CABLE DISCUSSION

IT Director Ehrenfeld was present to discuss this item. Council received a memo dated December 10, 2004, from Mr. Ehrenfeld regarding computer and phone cables for City Hall. After brief discussion, Council consensus was to proceed with the installation of new cabling and wiring for City Hall for phones, computers, scanners, copiers and fax machines. Funding authorization was requested (see Consent Agenda Item No. 3.5).

➤ BUDGET PRINCIPLES AND STRATEGIC FINANCE PLAN DISCUSSION

Finance Director Prosser distributed to the Council members two items:

1. FY 2005-06 Executive Staff Budget Principles
2. Draft Strategic Finance Plan (12-14-04 memorandum from Finance Director Prosser to the Mayor and Council, with the Strategic Plan attached for Council review).

Mr. Prosser briefly described the documents and advised this information was being provided to the Council for review before the January 18, 2005 goal-setting meeting.

In addition, Mr. Prosser advised that a joint meeting with the Budget Committee members is scheduled for the January 25 Council meeting to review financial forecast information.

➤ MEASURE 37 UPDATE

This topic appears as Item No. 7 on the Business Agenda for this meeting. City Attorney Ramis reviewed with the Council the proposed ordinances, which would provide a process for written demands for compensation under Ballot Measure 37. Two ordinances were presented to the Council representing one option that would revise Ordinance No. 04-12 to include a requirement for a deposit and submittal information. Mr. Ramis reviewed the deposit and deposit refund provisions of the ordinance. The second ordinance option included a provision for actions by neighboring property owners. City Attorney Ramis confirmed that these provisions are available to property owners regardless of whether this language is included in the Tigard legislation and this would serve as another place for information about this option for residents to use if they have issues concerning their property because of a neighbor's actions.

Council briefly discussed the pros and cons of the proposed ordinances and some of the scenarios that may occur. It was noted that this ordinance can be further amended at a later time if needed.

➤ ADMINISTRATIVE ITEMS

- Council received a copy of a revised legal description for Option 1 regarding the Annexation Public Hearing (Agenda Item No. 8, listed below).

EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 7:20 p.m. as provided by ORS 192.660 (2) h to discuss pending litigation.

Executive Session concluded at 7:30 p.m.

1. BUSINESS MEETING

- 1.1 Call to Order – Mayor Dirksen called the City Council & Local Contract Review Board to order at 7:40 p.m.
- 1.2 Roll Call – Mayor Dirksen and Councilors Moore, Sherwood, Wilson, and Woodruff were present.
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports

Council Woodruff commented that the 5th Tuesday meeting held on November 30, 2004, went well.
- 1.5 Call to Council and Staff for Non-Agenda Items: None

2. CITIZEN COMMUNICATION

- Bruce Dalrymple, Tualatin Hills Park & Recreation District Board President asked that additional testimony be received on the Parks System Development Charges, which would be considered by Council later in the meeting (Agenda Item No. 6). After brief discussion among the Council members and staff, Mayor Dirksen advised that short testimony would be heard during that item with it being noted that public hearing had already been conducted at a previous Council meeting. Mr. Frewing had also signed in on the Citizen Communication register for this item and his testimony would be heard during the Council review of this item.
- Gretchen Buehner, 13429 SW 136th, Tigard, OR 97223, urged the Council to consider, with open and complete discussion, the City policy of islands and annexation in the near future. She said Tigard has a number of islands and she referred to the Metzger and Bull Mountain areas.

- Tigard High School Student Envoy Nikki Pham distributed information and gave a report about recent and upcoming activities at Tigard High School.
- Tigard Area Chamber of Commerce Dan Murphy reviewed the upcoming Chamber of Commerce events planned for December and January.
- Follow-up to Previous Citizen Communication

City Manager Monahan reported that for follow up to the November 23, 2004, City Council meeting, the two items raised by Norman Russell and Ed Duffield regarding the Edgewood neighborhood were resolved at that meeting. He reviewed Mr. Russell's and Mr. Duffield's concerns about a multi-family development. At that meeting, Mayor Dirksen noted that Clean Water Services and Tualatin Valley Fire & Rescue reviews all applications and is required to sign off on them before any permits are issued.

Youth Advisory Council President Williams reviewed the Consent Agenda:

3. CONSENT AGENDA: These items are considered to be routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. Motion to:

- 3.1 Approve Council Minutes for November 9 and November 15, 2004
- 3.2 Receive and File
 - a. Council Calendar
 - b. Tentative Agenda
 - c. Canvass of Votes for Mayor, Two City Councilor Positions, and Bull Mountain Annexation Measure-November 2, 2004 Election
- 3.3 Local Contract Review Board:
 - a. Approve the purchase of a Chevrolet police pursuit Tahoe Sport Utility vehicle
 - b. Approve the purchase of two Ford F-250 pick-up trucks for the Public Works Division
 - c. Approve the purchase of three Ford F-350 pick-up trucks for the Public Works Division
- 3.4 Amend City Manager's Employment Agreement Confirming Health Insurance Benefits – Resolution No. 04-92

A RESOLUTION APPROVING AN AMENDMENT TO CITY MANAGER WILLIAM A. MONAHAN'S EMPLOYMENT AGREEMENT WITH THE CITY OF TIGARD, CORRECTING HEALTH INSURANCE BENEFITS

- 3.5 Approve Budget Amendment No. 7 to the FY 2004-05 Budget to Increase Appropriations in the Facility Fund for the Upgrade of the Wiring System in City Hall – Resolution No. 04- 93

A RESOLUTION APPROVING BUDGET AMENDMENT #7 TO THE FY 2004-05 BUDGET TO INCREASE APPROPRIATIONS IN THE FACILITY FUND FOR THE WIRING/CABLING SYSTEM OF CITY HALL

- 3.6 Approve Budget Amendment No. 5 to the FY 2004-05 Budget to Increase Appropriations in the Community Services Program to Establish a Residential Services Agency Emergency Fund – Resolution No. 04-94

A RESOLUTION APPROVING BUDGET AMENDMENT #5 TO THE FY 2004-05 BUDGET TO INCREASE APPROPRIATIONS IN THE COMMUNITY SERVICES PROGRAM TO ESTABLISH A RESIDENTIAL SERVICES AGENCY EMERGENCY FUND

Motion by Councilor Moore, seconded by Councilor Sherwood, to approve the Consent Agenda.

The Consent Agenda was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Moore:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

4. CONSIDER A RESOLUTION RECOGNIZING MELVIN WALKER FOR TWENTY-THREE YEARS OF SERVICE WITH THE CITY OF TIGARD

- a. Dennis Koellermeier, Public Works Director, presented this agenda item. He noted that Melvin Walker has been an employee of the City of Tigard since 1981. The Public Works staff will miss Mel and wish him well in his retirement.
- b. Mayor Dirksen read the proposed resolution recognizing Mr. Walker after which Mr. Walker presented to the City Manager some work overalls and requested that the City Manager report for duty. The Mayor and City Manager thanked Mr. Walker for his years of service and wished him well in the future.
- c. Motion by Councilor Wilson, seconded by Councilor Woodruff, to approve Resolution No. 04-95.

RESOLUTION NO. 04-95 – A RESOLUTION RECOGNIZING MELVIN WALKER FOR TWENTY-THREE YEARS OF SERVICE WITH THE CITY OF TIGARD

Resolution No. 04-95 was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Moore:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

➤ CERTIFICATE OF RECOGNITION TO COUNCILOR BRIAN MOORE

Mayor Dirksen presented a Certificate of Recognition to Councilor Brian Moore, whose term of office expires December 31, 2004. Councilor Moore served more than 12 years as a Board and Committee Member, City Councilor, Council President and Mayor Pro-Tem.

Councilor Moore expressed appreciation to the management and employees of the City who contribute so much. He noted he has worked with a number of different Mayors and Council members who were dedicated to the City's well being. He thanked the citizens for allowing him to work for the City.

5. PUBLIC HEARING – RESOLUTION TO DECLARE REAL PROPERTY LOCATED AT 14040 SW 117TH AVENUE AS SURPLUS AND AUTHORIZE STAFF TO CARRY OUT THE SALE OF SAID PROPERTY.

- a. Mayor Dirksen opened the public hearing.
- b. Buyer Joe Barrett summarized the staff report, which is on file in the City Recorder's office. The issue before the Council was to consider whether to declare the property located at 14040 SW 117th Avenue as surplus property and authorize the City Manager or designee to offer the property for sale and negotiate the final price and terms of sale.
- c. Public Testimony: None
- d. Staff recommendation was to declare the property as surplus and authorize the City Manager or designee to offer the property for sale and negotiate the final price and terms of the sale with a minimum term of \$150,000. In response to a question from Councilor Moore, staff confirmed that the house on the property was inhabitable.
- e. Mayor Dirksen closed the public hearing.
- f. Council Consideration: Resolution No. 04-96

RESOLUTION NO. 04-96 – A RESOLUTION DECLARING REAL PROPERTY LOCATED AT 14040 SW 117TH AVENUE AS SURPLUS, SETTING THE MINIMUM ACCEPTABLE TERMS OF ANY FUTURE SALE, AND AUTHORIZING STAFF TO CARRY OUT THE SALE OF SAID PROPERTY

Motion by Councilor Sherwood, seconded by Councilor Woodruff, to approve Resolution No. 04-96.

The motion was adopted by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Moore:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

6. ADOPT PARKS SYSTEMS DEVELOPMENT CHARGES (SDC) METHODOLOGY AND MASTER FEE RATE RESOLUTION

- a. Mayor Dirksen reopened the public hearing.
- b. Public Works Director Koellermeier reviewed the staff report, which is on file in the City Recorder's office. The Council conducted a public hearing on November 23, 2004, after which the Council directed staff to prepare a resolution adopting new methodology and rates and an amendment from staff addressing a concern from the Home Builder's Association.

Consultant Don Ganer reviewed a PowerPoint presentation, which is on file in the City Recorder's office.

- c. Public Testimony
 - o E-mail communications between Mr. John Frewing and Public Works Director Koellermeier were distributed to the Council. These communications are on file in the City Recorder's office.
 - o Bruce Dalrymple, Tualatin Hills Park and Recreation District (THPRD) Board President, 15707 SW Walker Road, Beaverton, OR 97006 testified about his concerns with rates and asked the Council carefully consider the use of balance in making rate-setting decisions since such costs are passed on to consumers in a slow economy that has not yet fully recovered. He said that jurisdictions may be forced to deal with the legislature if cities and counties continue to adopt increased rates. Mr. Dalrymple, in a brief discussion with Councilor Wilson explained the

action of the THPRD Board wherein the Board approved a rate that was only 65 percent of what was justifiable.

- o Mr. John Frewing, 7110 SW Lola Lane, Tigard, OR 97223, said he was not asking for a delay of the action setting new SDC rates; rather, he was requesting the City begin a 2005 SDC review. He noted the high cost of land and the need to collect higher fees so that land for parks can be purchased. He contended that the land prices assumed in the study for this current rate consideration were too low and some of the study's conclusions were not consistent with the Park Master Plan.

There was discussion between Mr. Frewing and Council members regarding Mr. Frewing's issues and his questions concerning the validity of the data and the resulting recommendations presented in the Ganer study. Mayor Dirksen said these fees will need updating and will be reviewed in the future.

- o Kelly Ross, representing the Home Builders Association said he would like to reiterate a recommendation made previously by Mr. Ernie Platt and urged that the Council consider phasing in this increase. Mr. Ross advised that projects, which were started a number of months ago, had not included calculations for these increased fees and this adversely impacts homebuilding businesses.

Councilor Wilson and Mr. Ross discussed whether some of these costs are eventually passed along to buyers. Mr. Ross noted that most houses built in the Tigard area are not speculative and the ability to pass along increases is a somewhat constrained.

d. Response to Public Testimony

Mr. Ganer acknowledged he was aware of the action for adopting fees (65 percent of the justifiable amount) by THPRD and the Tigard Council would have the ability to do a similar action and could choose to adopt a rate between 0-100 percent of the justifiable amount.

He referred to Mr. Frewing's testimony with regard to estimates for land costs and explained the numbers were derived from an average of prices this last year. He also responded to Mr. Frewing's questions about consistency with the Parks Master Plan, noting his study (Ganer & Associates) did not address all of the projects included in the plan; the projects listed were only those that could be done within a five-year timeframe. Mr. Ganer commented on growth and park land deficiencies, the fact that larger parcels of land are not available, and the basis for the recommended fees. He said that THPRD used a formula based on number of employees and this was successfully challenged and overturned in court.

The fee proposed for Tigard is based on development activity and is supported by the Tigard legal counsel.

e. Mayor Dirksen closed the public hearing.

f. Council Discussion

Councilor Wilson commented about the total of the SDC fees on average versus the increases of the prices of homes.

Councilor Moore said the value of land is increasing more than the increases in fees. He said he would support a later review to determine whether a further fee increase is warranted.

Councilor Sherwood advises she supports the proposed fee increase noting that new development puts pressure on parks.

Councilor Woodruff advised he also supports the increase noting there is a need to do some catch up with the fees.

Councilor Wilson advised he is sensitive to increased housing costs, which are attributable primarily to increased land costs. He said he would support the proposed fee increase although he would rather it not be so drastic.

Mayor Dirksen stated that fees need to be reviewed on a regular basis and said he believed the proposed increase was justified.

g. Council Consideration: Resolution No. 04-97

RESOLUTION NO. 04-97 - A RESOLUTION UPDATING THE PARKS AND RECREATION SYSTEM DEVELOPMENT CHARGE (SDC) METHODOLOGY AND AMENDING RESOLUTION NO. 04-37 BY AMENDING EXHIBIT A THERETO AND INCREASING PARK SDC RATES

Motion by Councilor Sherwood, seconded by Councilor Woodruff, to adopt Resolution No. 04-97.

The motion was approved by a unanimous vote of the City Council present:

Mayor Dirksen:	Yes
Councilor Moore:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

7. PUBLIC HEARING – ORDINANCE TO IMPLEMENT MEASURE 37, PROVIDING A PROCESS FOR CONSIDERATION OF WRITTEN DEMANDS FOR COMPENSATION UNDER 2004 BALLOT MEASURE 37, AND AMENDING ORDINANCE 04-12.

- a. Mayor Dirksen opened the public hearing.
- b. Community Development Director Jim Hendryx presented the staff report, which is on file in the City Recorder's office. His review included a slide presentation, which is on file in the City Recorder's office. City Attorney Ramis also explained the two options before the Council (see also the Study Session review of this agenda item).

Mr. Ramis further explained proposed Ordinance, Option 2, which includes a provision for actions by neighboring property owners. Option 2 outlines that if the Council's approval of a claim waiving the enforcement of a regulation causes a reduction in value of other property located in the vicinity of the claimant, these property owners would have the right to maintain an action in State Circuit Court to recover from the claimant the amount of the reduction. The nearby property owners, if successful, would also be entitled to an award of reasonable attorney fees. Mr. Ramis confirmed for Councilor Woodruff that Measure 37 is silent with regard to the preceding proposed provision.

Mr. Hendryx said he has talked to about ten people to date about the process for filing a claim as a result of Measure 37. At this time, it is unclear whether they will pursue claims. All land use ordinances (about 1,000) since Tigard's incorporation have been identified and a data base is being created so members of the public can research Measure 37 issues.

- c. Public Testimony: None
- d. Council Discussion:

Councilor Moore said he thought the proposed Option 2 Ordinance is "going in the right direction..." and he advised he would support this option.

Councilor Wilson advised he preferred Option 1 because he does not want to encourage more litigation. He said Option 2 might appear as if the City is trying to circumvent the will of the voters. He said he would like to carry out the intent of the law while maintaining a semblance of stability.

Councilor Sherwood noted that this ordinance would likely need to be revised over time. She noted she supported the Option 2 Ordinance.

Councilor Woodruff advised the initial guidelines should be as simple as possible and he favored Option 1. As the City gains experience with implementing Measure 37, changes can be made to the procedures.

Mayor Dirksen agreed that the process should be set forth in as "pure a way as possible." He outlined his concerns about a potential domino-effect for claims. He noted that Option 2 clarifies existing law and draws attention to potential consequences of Measure 37 to be considered by a claimant and how the claim would impact a neighborhood. Mayor Dirksen said he thought he could support Option 2.

- e. Close Public Hearing
- f. Council Consideration: Ordinance 04-13

Motion by Councilor Moore, seconded by Councilor Sherwood, to adopt Ordinance No. 04-13, Attachment 2 (b)

ORDINANCE NO. 04-13 (Attachment 2 [b]) – AN ORDINANCE AMENDING ORDINANCE NO. 04-12 PROVIDING A PROCESS FOR CONSIDERATION OF CLAIMS FOR COMPENSATION UNDER 2004 BALLOT MEASURE 37, ADDING A NEW CHAPTER 1.20 TO THE TIGARD MUNICIPAL CODE, AND DECLARING AN EMERGENCY

The motion was approved by a majority vote of the City Council present:

Mayor Dirksen:	Yes
Councilor Moore:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	No
Councilor Woodruff:	No

Councilor Woodruff asked that it be clarified that the "No" vote cast was related to the issues noted during the discussion on the choice between Option 1 or Option 2.

8. PUBLIC HEARING (Quasi-Judicial) - ARBOR SUMMIT AND ADJACENT PROPERTIES ANNEXATION – ZCA 2004-0001

The following description was read by City Attorney Ramis:

REQUEST: The applicant is requesting annexation of two (2) parcels containing 8.9 acres into the City of Tigard, better known as Arbor Summit Subdivision I and II. An additional 9.29 acres has been included by means of consent (Bella Vista Subdivision). The City is also including a 17.91 acre piece of the contiguous Summit Ridge Subdivision by using double majority, as allowed by

Oregon Revised Statute 222.170.2, Effect of consent to annexation by territory. Therefore, this annexation is for eight (8) parcels totaling 36.1 acres.

LOCATION: Eight contiguous properties located between SW Bull Mountain Road and SW Beef Bend Road, east of SW 133rd Avenue and west of Turnagain Heights; also known as Arbor Summit I and II, Bella Vista, and a portion of Summit Ridge Subdivisions. 12780 and 12950 SW Bull Mountain Road; 12525, 12635, 12655 and 12825 SW Beef Bend Road; and 2 unaddressed parcels. Washington County Tax Assessor's Map Numbers 2S109AD, Tax Lots 1400 and 1500; 2S109DA, Tax Lot 2200; and 2S109DD, Tax Lots 100, 102, 300, 306 and 7000. **ZONE:** R-7: Medium-Density Residential District. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally. **APPLICABLE REVIEW CRITERIA:** The approval standards for annexations are set out in Community Development Code Chapters 18.320 and 18.390, Comprehensive Plan Policies 2 and 10; ORS Chapter 222; and Metro Code Chapter 3.09.

- a. Mayor Dirksen opened the public hearing.
- b. Community Development Director Jim Hendryx reviewed the staff report, which is on file in the City Recorder's office. Mr. Hendryx distributed a revised legal description for the Ordinance identified as "Option 1."
- c. City Attorney read a statement regarding legal process. Copies of the legal process were available for review by the public at the entrance to the meeting room.

No conflicts were declared by the members of the City Council nor were there any challenges to any Council member's ability to participate in this decision.

- d. Public Testimony:

Applicant –

- Michael Robinson, attorney for the applicant, 1120 NW Couch Street, Portland, Oregon 97209, requested that the proposed annexation go forward.

Opponents

- Isador Morgavi, 15145 SW 199th Avenue, Tigard, OR 97224, read a letter into the record in opposition to the proposals for annexation citing the need to resolve issues before the City considers annexation in the

Bull Mountain area. Mr. Morgavi asked that the record be kept open for 15 days. A copy of Mr. Morgavi's letter is on file in the City Recorder's office.

- Julie Russell, 12662 SW Terraview, Tigard, OR 97224, presented testimony asking the Council to delay consideration of piecemeal annexations. Ms. Russell requested that the record be kept open for 15 days. A copy of Ms. Russell's remarks is on file in the City Recorder's office.
- Ken Henschel, 14530 SW 144th Avenue, Tigard, OR 97224, requested that the Council delay consideration of annexations in the area referring to the recent outcome of the election on the Bull Mountain annexation question and his recommendation for a cooling-off period. A copy of Mr. Henschel's remarks is on file in the City Recorder's office.

Councilor Woodruff commented that the majority of Tigard residents voted in favor of the annexation of the Bull Mountain area; he noted the Council's responsibility to follow the will of the people who placed the City Council in their positions. Mr. Henschel responded that such decisions should not be made in a vacuum because these decisions would affect a much larger area than just the City of Tigard. He again requested that the Council step back and not do any annexations for awhile.

Councilor Moore referenced situations where property owners have requested annexation. Mr. Henschel said that he disagreed with Councilor Moore on this question and recommended the Council step back.

- Gretchen Buehner, 13249 SW 136th Place, Tigard, Oregon, testified that a "good chunk" of Bull Mountain consists of Tigard residents who voted for annexation. She asked several process questions:
 - Was the timing of the request prior to the City's decision to place the Annexation Plan on the ballot? Staff responded, yes, the request for annexation was made before the decision to place the Annexation Plan on the ballot.
 - Are there any 120-day time limit issues with respect to this application? City Attorney Ramis responded that he did not think this rule applies because it is not a permit.
 - If the City denies annexation, could this lead to a Measure 37 claim? City Attorney Ramis said that property owners would need to look to their own counsel for advice on Measure 37.
- Phil Deckert, 14540 SW 148th Place, Tigard, Oregon, testified in opposition to the annexation as he contended whether or not to annex this area had been addressed in the November election. The majority of

voters said no to the annexation. He said any action to annex this area would constitute a vote to overturn the will of the people and questioned the Council's right to do this. Mr. Deckert advised that the staff report is defective on the subject of urban services and lacks necessary detail. In response to a question by Mr. Deckert, Community Development Director Jim Hendryx advised that SDC fees are paid at the time of building permit application.

Rebuttal

- Michael Robinson, attorney for the applicant, West Hills Development, said that the approval criteria had been met. He cited Page 4 of the Staff Report outlining that adequate facilities are available as delineated in Community Development Code Section 18.320.020. With regard to the two requests that the record be left open for 15 days, the law provides that the record can be requested to be left open for no more than 7 calendar days. He requested approval of the annexation.
- e. Staff Recommendation – Community Development Director Jim Hendryx advised that the staff recommends the Council adopt the annexation as outlined in the Ordinance, Option 1, to annex the 36.1 acres. Mr. Hendryx noted the process and request is consistent with the criteria of the Comprehensive Plan and Community Development Code. The procedure is consistent with the Intergovernmental Agreements between the City of Tigard and Washington County. "Consents" are on file for Bella Vista and Arbor Summit I and II. The City has the authority to do incremental annexations. There is a statute that limits annexations within a specific time of a general election. Community Development Director Jim Hendryx referred to the testimony about delaying this annexation request until after the annexation plan election, which is required by state statute.

City Attorney Ramis commented on the PGE v. City of Estacada case cited in Mr. Morgavi's testimony (written testimony is on file with the City Recorder). This case dealt with annexations attempted by a very long "cherry-stem" connection using a road. Mr. Ramis said he did not believe this case was applicable to the proposal before the Council. The City has authority to ask for consents or waivers for annexation. Courts have upheld that there is no obligation by taxpayers of a City to extend services to areas outside the City. The City can legitimately condition the extension of services to annexation.

f. Council Questions

In response to Councilor Wilson, City Attorney Ramis affirmed Mr. Robinson's statement that the record can only be required to be left open for seven days. An additional seven days could be granted upon request by the applicant. City

Manager Monahan suggested the following timeline: Seven days to receive additional written testimony followed by seven days as a rebuttal period for the applicant with a date certain for continuance of the hearing on December 28, 2004. Mr. Ramis clarified the record could be left open for written submittals only; there is no requirement for additional hearings.

Community Development Director Jim Hendryx confirmed for Councilor Woodruff that there is no one living in the proposed annexation areas at this time.

City Manager Monahan asked Council to let staff know if there were any additional questions or information needed. Otherwise, staff recommends the Council table this hearing to a date certain and he outlined potential hearing dates of December 28, January 11, or January 25.

In response to Councilor Sherwood's request about timing, Mr. Monahan advised there were no impending deadlines; however, he noted delay could mean the loss of some SDC revenue, which in the past has been of concern to residents in the area. Mayor Dirksen noted this proposal to annex is consistent with the City policy to consider taking in property as it comes up for development. The Council, in the past, has not chosen to annex by "cherry stem." The area that is the subject of the public hearing is in the City's park service area and, if the area is not annexed now, there would be a loss of approximately \$150,000 that could be used to further the City's Parks Master Plan.

There was brief discussion on timeline for the hearing. In view of the lateness of the hour, Council decided it would hear Agenda Item Nos. 9 and 12 at this meeting because of timing issues; however, Agenda Item Nos. 10, 11 and 13 would be continued to December 28, 2004.

Motion by Councilor Sherwood, seconded by Councilor Woodruff, to hold the record open to receive written testimony with an additional seven days available to the applicant to rebut the written testimony and the hearing continued to December 28, 2004, 7:30 p.m. at the Tigard City Hall.

The motion was approved by a unanimous vote of the City Council present:

Mayor Dirksen:	Yes
Councilor Moore:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

9. PUBLIC HEARING – ORDINANCE TO CONSIDER CODE AMENDMENT TO ALLOW BULK SALES IN THE INDUSTRIAL PARK (IP) ZONE

- a. Mayor Dirksen opened the public hearing.
- b. Associate Planner Morgan Tracy presented the staff report, which is on file in the City Recorder's office. The staff and Planning Commission recommend that Council amend the City of Tigard Development Code to allow Bulk Sales as a "Restricted Use" in the IP Zones, subject to limitations of size and outdoor activity. Mr. Tracy presented highlights of the staff report in a PowerPoint presentation format, which is on file in the City Recorder's office.
- c. Public Testimony
Proponents:
 - o Bruce Vincent, 825 NE 20th, Portland, Oregon spoke in favor of the Code Amendment noting there are similar businesses nearby and the request is consistent with Metro rules.
 - o Paul Schatz, 6600 SW Bonita Road, Tigard, OR 97223, noted that Tigard is home to his business and without the proposed amendment, they would not be able to expand.
- d. Staff recommended approval of the proposed Code Amendment.
- e. Mayor Dirksen closed the public hearing.
- f. Council consideration:

Motion by Councilor Woodruff, seconded by Councilor Sherwood, to adopt Ordinance No. 04-14.

ORDINANCE NO. 04-14 – AN ORDINANCE AMENDING THE LANGUAGE OF THE TIGARD COMMUNITY DEVELOPMNT CODE CHAPTER 18.520 TO ALLOW BULK SALES WITHIN CERTAIN AREAS OF INDUSTRIAL PARK ZONES, SUBJECT TO LIMITATIONS ON SIZE AND OUTDOOR ACTIVITY (ZOA2004-00001)

The motion was approved by a unanimous vote of the City Council present:

Mayor Dirksen:	Yes
Councilor Moore:	Yes

Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

10. REVISED CITY/TRIMET MEMORANDUM OF UNDERSTANDING (MOU)

This item was set over for consideration at the Tigard City Council meeting of December 28, 2004.

11. PUBLIC HEARING – RESOLUTION TO ADOPT AMENDED MASTER FEES FOR LONG-RANGE PLANNING

This item was set over for consideration at the Tigard City Council meeting of December 28, 2004.

12. RESOLUTION AUTHORIZING CITY MANAGER TO SIGN OREGON PARK AND RECREATION DEPARTMENT/LAND AND WATER CONSERVATION FUND FANNO CREEK TRAIL GRANT APPLICATION

a. Parks Manager Dan Plaza summarized the staff report, which is on file in the City Recorder's office. If approved, this grant would provide needed funding for the construction of a segment of the Fanno Creek Trail between Hall Boulevard and Wall Street. Grant approval is not guaranteed; however, Mr. Plaza reported the City should have a good chance of award.

b. Council consideration:

Motion by Councilor Wilson, seconded by Councilor Woodruff, to approve Resolution No. 04-98.

RESOLUTION NO. 04-98 – A RESOLUTION AUTHORIZING SUBMITTAL TO THE OREGON PARK AND RECREATION DEPARTMENT OF A FEDERAL LAND AND WATER CONSERVATION FUND GRANT TO PARTIALLY FINANCE THE CONSTRUCTION OF THE 2ND SEGMENT OF THE FANNO CREEK TRAIL AT FANNO CREEK PARK

The motion was approved by a unanimous vote of the City Council present:

Mayor Dirksen:	Yes
Councilor Moore:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

13. PUBLIC WORKS DEPARTMENT: MISSION/VALUES EXERCISE RESULTS

This item was set over for consideration at the Tigard City Council meeting of December 28, 2004.

- 14. COUNCIL LIAISON REPORTS: None
- 15. NON AGENDA ITEMS: None
- 16. ADJOURNMENT

Motion by Councilor Woodruff, seconded by Councilor Sherwood, to adjourn the meeting.

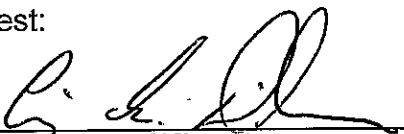
The motion was approved by a unanimous vote of the City Council present:

Mayor Dirksen:	Yes
Councilor Moore:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

The meeting adjourned at 10:38 p.m.


Catherine Wheatley, City Recorder

Attest:



Mayor, City of Tigard

Date: 1-25-05